

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 SAJ-01 IO-04 CIAE-00 DODE-00 PM-03

INR-05 L-02 NSAE-00 NSC-05 PA-01 RSC-01 PRS-01 SP-02

SS-15 USIA-06 ACDA-05 NIC-01 /065 W

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R 211651Z OCT 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC 5781

INFO AMEMBASSY LONDON

AMEMBASSY PARIS

USMISSION NATO BRUSSELS

USMISSION USBERLIN

AMEMBASSY BERLIN

C O N F I D E N T I A L SECTION 01 OF 02 BONN 16542

E.O. 11652: GDS

TAGS: PGOV, PFOR, WB, US, UR, GW

SUBJECT: BRUECKMANN CASE: SOVIET INQUIRIES

REF: BONN 14789; BERLIN 1628

SUMMARY: LOCAL SOVIET EMBASSY POLITICAL COUNSELOR VISITED FRG FONOFF LAST WEEK TO MAKE SOME CRITIL NOISES ABOUT PROSPECTIVE AMENDMENTS TO FRG LAW THAT WOULD HAVE THE EFFECT, HE SAID, OF BROADENING THE COMPE- TENCE OF THE BUNDESGERICHTSHOF IN WEST BERLIN. SOVIET REP ALSO MET WITH EMBOFF SUBSEQUENTLY TO MAKE SIMILAR NOISES, WARNING THAT MOSCOW REACTION COULD BE AS STRONG AS THAT AGAINST ESTABLISHMENT OF FEDERAL ENVIRONMENT AGENCY (FEA) IN WEST BERLIN IN JULY. BOTH EMBOFF AND FRG FONOFF REP USED TALKING POINTS IN REFTELS TO TRY TO BRING SOVIET REP TO UNDERSTAND WHAT REALLY WAS INVOLVED. HE DID NOT APPEAR CONVINCED, BUT DID PROPOSE A POSSIBLE COURSE OF ACTION BY ALLIES THAT MIGHT MEET SOVIET POINT. WE ARE PRESENTLY CONSIDERING HIS PROPOSAL AND WILL BE CONFIDENTIAL

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CHECKING WITH FRG FONOFF FOR REACTION TO IT. END

SUMMARY.

1. SOVIET REP CALLED AT FONOFF OCTOBER 15 TO INQUIRE ABOUT THE PROPOSED AMENDMENT TO THE FRG LAW ON INNER-GERMAN LEGAL AND OFFICIAL ASSISTANCE. HE SAID THE SOVIET SIDE HAD NOTED THAT THE BUNDESGERICHTSHOF WOULD BE GRANTED WIDER COMPETENCE IN BERLIN THAN HERETOFORE. HE COMMENTED THAT THIS SEEMED AN OBVIOUS EFFORT TO SOLVE THE BRUECKMANN CASE AND TO PUT INTO EFFECT THE DECISION OF THE FEDERAL CONSTITUTIONAL COURT. HE COULD ENVISAGE A STRONG REACTION FROM MOSCOW AGAINST THE WIDENING OF THE FEDERAL GOVERNMENT'S AUTHORITY IN WEST BERLIN AND A SITUATION DEVELOPING SIMILAR TO THAT WHICH THE FEA'S ESTABLISHMENT IN WEST BERLIN ENGENDERED. IN MEETING ON OCTOBER 18 WITH EMBOFF, SOVIET REP WENT OVER MUCH OF THE SAME GROUND. BOTH FRG AND US REPS USED SOME OF TALKING POINTS IN REFTELS TO TRY TO ALLAY SOVIET'S SUSPICIONS.

2. SOVIET REP WAS SOMEWHAT FRANKER IN HIS DISCUSSION WITH US REP THAN WITH WEST GERMAN. HE TOLD US THAT THE TAKING OVER OF THE AMENDMENT IN WEST BERLIN WOULD PRODUCE A SHOCK IN MOSCOW, WHERE HIS AUTHORITIES BELIEVED THAT NO FEDERAL COURTS WERE COMPETENT IN WEST BERLIN. EMBOFF POINTED OUT RIDICULOUSNESS OF THIS BELIEF. SOVIET REP ACKNOWLEDGED THAT IT MIGHT BE SILLY BUT IT WAS A FACT OF LIFE. HENCE, THE REACTION TO THE BUNDESGERICHTSHOF'S INCREASED COMPETENCE IN WEST BERLIN COULD BE SERIOUS. HE WANTED TO TRY TO AVOID DIFFICULTIES, HE SAID, AND COULD ONLY ASK WHETHER THE ALLIES MIGHT BE PREPARED NOT TO TAKE THE AMENDMENT OVER IN WEST BERLIN.

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3. EMBOFF SAID THIS SEEMED TO HIM OUT OF THE QUESTION. HE SAID THAT THE CHANGE WOULD SIMPLY BRING THE 1953 LAW ON INNER-GERMAN COOPERATION IN CRIMINAL MATTERS INTO LINE WITH OTHER CRIMINAL LEGISLATION LONG IN FORCE IN BERLIN. HE ADDED THAT THE ALLIES WOULD NATURALLY ENSURE THAT NOTHING DONE BY THE COURT WOULD RUN COUNTER TO THEIR POSITION ON THE CONSTITUTIONAL COURT'S LACK OF COMPETENCE.

4. SOVIET REP SAID HE WONDERED WHETHER SOVIETS PROTESTED THE TAKING OVER IN WEST BERLIN AS HE WAS SURE THEY WOULD, THE ALLIES MIGHT NOT REPLY BY STATING THAT THEY WOULD REVIEW EACH CASE HANDLED BY THE BUNDESGERICHTSHOF IN BERLIN TO ENSURE THAT IT DID NOT GO BEYOND ITS COMPETENCE. US REP SAID HE WOULD REFLECT ON SOVIET'S QUESTION. SOVIET REP WARNED AT CONCLUSION OF MEETING THAT WE SHOULD NOT UNDERESTIMATE THE EXTENT OF THE JOLT THAT HIS AUTHORITIES IN MOSCOW WOULD EXPERIENCE WHEN CONFIDENTIAL

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HE REPORTED ON THE DRAFT AMENDMENT TO THE LAW AND ITS EFFECT IN BERLIN. EMBOFF REPLIED THAT BRUECKMANN CASE WAS FRANKLY A POLITICAL ISSUE IN FRG AND THAT THE SOVIETS SHOULD KEEP THIS IN MIND AS THEY CONTEMPLATE WHAT ACTIONS THEY MIGHT TAKE.

5. COMMENT: WE CONTINUE TO BELIEVE THAT THE GUIDELINES FOR RESPONDING TO ANY SOVIET DEMARCHE CONTAINED IN REFTELS ARE SUFFICIENT TO COVER OUR LEGAL POSITION. WE WILL, HOWEVER, EXAMINE SOVIET IDEA (PARA 4) TO SEE IF THERE IS ANYTHING TO IT. WE WILL ALSO CHECK IT OUT WITH FRG FONOFF REPS INASMUCH AS WE ARE EXCHANGING INFO WITH THEM ON SOVIET QUERIES ON THE DRAFT LAW. HILLENBRAND

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